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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/091,602	04/19/1999	JOACHIM BUNGER	BEIERSDORF50	5123
27384	7590	02/15/2005	EXAMINER	
NORRIS, MCLAUGHLIN & MARCUS, PA 875 THIRD STREET 18TH FLOOR NEW YORK, NY 10022			SHARAREH, SHAHNAM J	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/091,602

Applicant(s)

BUNGER ET AL

Examiner

Shahnam Sharareh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Amendment filed on July 01, 2004 has been entered. Claims 11-23 are pending. Applicant's amendment has overcome the rejections of record. Accordingly, the rejections are withdrawn in view of the claim amendments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "acylated disaccharide or oligoglucosides" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation of R sub 6 to include acyl groups having 1-25 carbon atoms. However, the base claim 11 is not directed to acylated saccharides. Accordingly, claim 14 improperly modifies the scope of claim 11 and thus renders the claim confusing.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Malik et al US Patent 4,668,422.

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The instant claims are directed to methods of treating *Propionibacterium acne* comprising providing one or more alkylated mono- or oligo-saccharides and applying it to an afflicted portion of skin.

Malik meets all elemental steps of the instant claims. Malik teaches compositions for bubble bath comprising an alkyl glycoside which falls within the scope of the instantly claimed alkyl saccharides including octadecyl maltoside, a disaccharide linked to an unbranched saturated alkyl group having 18 carbons (see abstract, col 3, line 54, col 4, lines 20-36; Table A; col 9, line 30-35). Malik's composition contains suitable dermatological carrier. (see col 15, lines 24-40). Thus, Malik teaches the compositions employed in the instant claims 11, 13-15.

Malik then teaches that the composition has been tested on humans during a consumer panel personal preference test. (see col 9, lines 10-20). The composition of Malik is a bubble bath formulation thus it is being applied to entire body of a consumer including any afflicted areas. Accordingly, Malik's application steps meet the limitations of the instant application step.

Since Malik's method steps and compositions employed meets the limitations of the instant claims, they inherently anticipate the intended clinical endpoint instantly claimed.

Claim Rejections - 35 USC § 103

Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malik et al US Patent 4,668,422.

The teachings of Malik are described above. Malik's teachings fail to explicitly add an acylated saccharide to his alkyl glycoside containing compositions.

Malik, however, teaches that suitable moisturizing agents such as alpha methylglucoside fatty esters such as methyl glucoside sequistearate or dioleate, may be added to his compositions. (col 7, lines 38-43). Such compounds meet the limitations of the instant acyl saccharides of claims 21-23.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of invention to further add an acylated glucoside such as methyl glucoside sequistearate or dioleate to improve moisturizing effects of Malik's formulation because as suggested by Malik, the ordinary skill in the art would have had a reasonable expectation of success to improve the moisturizing properties of Malik's bubble bath products.

Conclusion

No claims are allowed. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnaz Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SREENIVASAN PADMANABHAN
SUPERVISORY PATENT EXAMINER